IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3413 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JIGNESHBHAI NARANBHAI TITAWALAREPRESENTED BY NARANBAI M

Versus

STATE GOVERNMENT OF GUJARAT

Appearance:

1. Special Civil Application No. 3413 of 2004

MR DD VAIDYA for MR HD RANA for Petitioner No. 1

MS AC RAVAL, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu has challenged his detention order dated 17-02-2004. By

the said order, the petitioner is detained as a "bootlegger" under PASA. Along with the order of detention, petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference about one criminal case pending against the petitioner. The said case is registered under the Bombay Prohibition Act. In the grounds of detention, the detaining authority has also relied upon the statement of some witnesses and the authority has claimed privilege under Section 9 (2) of the Act and, therefore, the names of those witnesses have not been disclosed. The aforesaid order of detention is challenged by the petitioner on various grounds.

2) Mr.D.D.Vaidya, learned advocate for the petitioner submitted that it is alleged that the petitioner is dealing in foreign liquor. It is also submitted that the petitioner is a commerce student and his mark sheet is also annexed along with this petition. It is further submitted that, therefore, it cannot be said that the petitioner is a dangerous person and names of witnesses should not have been kept secret by claiming privilege under Section 9 (2) of the Act. It is submitted that before claiming privilege under Section 9 (2) of the Act, the authority has not tried to verify about the credentials and character of the detenu. He submitted that the privilege is claimed in a routine manner and, therefore, without any basis the authority has tried to withhold the names of witnesses and as a result of that the petitioner is denied the valuable right of making effective representation. To substantiate his say, Mr.Vaidya has relied upon the decision of this Court rendered in the case of KISHOR NAGINBHAI PARMAR v. STATE OF GUJARAT, reported in 2000 (4) GLR 3236, wherein it is held that before claiming privilege under Section 9 (2) of the Act, proper exercise is required to be made for finding out antecedents of the detenu and there should be some credible material to justify the say that if the names of witnesses are disclosed it will be harmful to their life. Since in the instant case, said exercise has not been done, privilege claimed in this case is not genuine and proper.

3) Mr.Vaidya, learned advocate for the petitioner submitted that there is only solitary case registered against the petitioner and considering the same, it cannot be said that the petitioner is a habitual offender. It is further submitted that considering the said case, it cannot be said that the petitioner has violated public order and at the most it can be said that law and order is violated by the petitioner. To

substantiate his say, Mr.Vaidya has relied upon the judgement of this Court in Sandip Omprakash Gupta Vs. State of Gujarat and others, reported in 2004 (1) GLR 864, wherein this Court has observed that a solitary offence under the Bombay Prohibition Act was registered against the detenu and the authority relied on two other unregistered offences based on statements of certain witnesses and, therefore, a learned Single Judge of this Court held, on facts, that the detenu could have been dealt with under the ordinary criminal law. The order of detention passed therein, treating the petitioner as a bootlegger, is set aside. Since I am bound by the view taken by the learned Single Judge, in view of the aforesaid ground about solitary incident of a registered case under the Bombay Prohibition Act, on the aforesaid submission about solitary case lodged against the petitioner, which can be taken care under the ordinary criminal law, this petition is required to be allowed.

4) In view of what is stated above, this petition is allowed. The order of detention dated 17-02-2004 is quashed and set aside. The detenu, Jigneshbhai Naranbhai Titawala is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar,J.)
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